Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	
	)	CC Docket No. 96-115
Telecommunications Carriers' Use	)	
Of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	
	)	

REPLY OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), pursuant to Section 1.429(f) of the Commission's rules, 47 C.F.R. §1.429(f), hereby respectfully submits its reply to the oppositions and comments that were filed by various parties in response to the Petitions for Reconsideration of the *Second Report and Order*, FCC 98-27, released February 26, 1998, in the above-referenced proceeding (*CPNI Order*).

I. THE COMMISSION'S PROHIBITION ON THE USE OF CPNI TO WIN BACK CUSTOMERS MUST BE MODIFIED.

Although some parties urge the Commission to reverse its decision prohibiting competitive carriers to use their former customers' CPNI in win back marketing campaigns, they would have the Commission continue such ban for ILECs. They claim that ILECs must be prevented from using CPNI in this regard because

of the danger that ILECs will abuse their status as gatekeepers for all changes in service providers to harm competition. *See, e.g.*, MCI at 16; TRA at 7; e.spire at 4; CWI at 4-5; and KMC at 3-5.

A complete prohibition on ILECs' use of their former customers' CPNI for win back marketing is unnecessarily broad. As Sprint explained in its June 25 Opposition and Comments (at 1-4) and as the parties that argue for keeping the absolute ban for ILECs in place concede, the potential for anti-competitive abuse of its gatekeeper status by an ILEC arises when after receiving notice that customer wishes to change its service provider but before implementing such change, the ILEC seeks to use a customer's CPNI to retain the customer. For example, MCI points out that the opportunity for such abuses

> ...arises when an ILEC, acting in its capacity as the underlying facilities-based carrier, learns from a changeover over that a local service customer intends to switch to a local service reseller. The ILEC then exploits that advance notice of the customer's intent to change local carriers by attempting to retain the customer before the change is actually carried out.

MCI at 16. *See* also e.spire at 4 ("ILECs are in the unique position of receiving 'advance warning' of the loss of each customer to a competitor"); KMC at 4 ("Upon receiving notice of a carrier service change" an ILEC is able to exploit the "change-over period" by having its retail marketing unit "use

CPNI to propose new pricing packages" to its soon-to-be former customer"); and TRA at 7 (same). Thus, the Commission need only proscribe the use of CPNI by ILECs for customer retention purposes. Once customers are switched to their new service providers, the ILECs, like all other carriers, should be able to use their former customers' CPNI in an attempt to regain such customers' business.[1]

II. THE COMMISSION MUST REVERSE ITS INTERPRETATION OF THE RELATIONSHIP BETWEEN SECTIONS 222 AND 272.

Sprint and other Petitioners have demonstrated that the Commission's decision to allow a BOC to share its customer's local CPNI with its interLATA affiliate providing interLATA services to such customer without customer consent is legally infirm because it eliminates the structural separation requirements applicable to the BOCs under Section 272. *See, e.g.*, Sprint Petition at 6-8; AT&T Petition at 23-24; MCI Petition at 6-8; Comptel at 2-10. The BOCs' contrary arguments are without merit.

For example, the BOCs argue that the Commission cannot

[1]MCI claims that a ILEC acting on the knowledge it gains as the underlying carrier or access provider that its customer is about to change service providers "misappropriates carrier proprietary information protected under Section 222(b) ." MCI at 17. But, even assuming *arguendo* that a customer's decision to change service providers falls within the ambit of Section 222(b), an ILEC still should not be disqualified from using the CPNI of its former customer once the switch is made in an effort to regain that customer's business. *See* Frontier at 4.

subject them to more stringent CPNI requirements than those imposed on other carriers since, according to the BOCs, Section 222 must be applied to all carriers in an even-handed manner. *See, e.g.*, Bell Atlantic at 2-3; SBC at 9. But, this argument suffers from the same flaw inherent in the Commission's decision. It ignores Section 272 and the special requirements governing the BOCs' relationships with their interLATA affiliates that Congress enacted therein. In contrast, the position of Sprint and others, which endorses the approach suggested by Commissioner Ness in her partial dissent, enables the Commission to give effect to both Section 222 and Section 272.

Moreover, Commissioner Ness' approach does not place the BOCs at a competitive disadvantage or undermine consumer privacy interests as the BOCs would have the Commission believe. *See, e.g.*, SBC at 12; BellSouth at 15; U S West at 9-10. It simply places the BOCs' interLATA affiliate in the same position as an unaffiliated entity in terms of gaining access to BOC's customer records for purposes of marketing services to such customers. Both the BOC interLATA affiliate and the non-affiliated entity will have to obtain written authorization from the BOC's local customers in order to access their CPNI. And, empowering customers to determine which, if any, interLATA carrier, should be allowed access to their local CPNI in possession of the BOC

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III. THE REQUESTS BY SPRINT AND AT&T FOR GRANDFATHERING THEIR EXISTING CPNI DISCLOSURE AUTHORIZATIONS ARE REASONABLE AND SHOULD BE GRANTED.

Section 222 became effective with the enactment of the Telecommunications Act of 1996 and thus carriers became subject to its requirements at that time. Sprint sought to comply with the directive of Section 222(c) by requesting authorization from its customers to use their account information for the purpose of informing them of other Sprint-branded products and services. AT&T also sought to comply with the requirements of Section 222 by obtaining express approvals from its customers to use their CPNI to market other AT&T products and services to such customers. AT&T Petition at 18-22. Of course, the Commission had not promulgated any rules implementing the directives of Section 222. But, Sprint (and presumably, AT&T) recognized that nothing in Section 222 exempted carriers from complying with its provisions until the Commission had conducted a rulemaking and prescribed rules governing the use and disclosure of CPNI. Nor, for that matter, had the Commission issued any order exempting carriers from complying with Section 222 until the Commission had conducted a rulemaking to develop such rules. On the contrary, prior to the release of the *CPNI Order*, the Commission emphasized that carriers had an obligation to comply with Section 222. *Waiver from Customer Proprietary Network Information Notification Requirements* (CCB Pol 97-13), DA 97-

2599 released December 16, 1997 at ¶8. Plainly, Sprint and AT&T acted in good faith to obtain the consent of their customers to utilize their CPNI and, therefore, the express approvals that Sprint and AT&T obtained prior to the effectiveness of the Commission's *CPNI Order* should be grandfathered.

MCI argues that such requests for grandfathering be denied. According to MCI, AT&T's notices to customers of their CPNI rights -- Sprint notices were similar -- were "inadequate" since they did not provide customers with the information now required as a result of the Commission's *CPNI Order*. MCI at 46. Thus, MCI says that approvals granted by AT&T's (and Sprint's) customers should not be credited since they were not based on informed consent. MCI's argument here is meritless.

As AT&T points out (Petition at 18-19), the Commission found that "the term 'approval' in Section 222(c)(1) is ambiguous because it could permit a variety of interpretations." *CPNI Order* at ¶87. Given such ambiguity and in the absence of any Commission directive, an "informed approval" may be based upon a wide variety of notices as to the customer's CPNI rights. Like AT&T, Sprint used a notice that unequivocally informed customers that they had to affirmatively grant Sprint permission to access their CPNI to market other Sprint products and services to them. Sprint's customers were also informed that they had the right to deny such permission and, many Sprint

customers exercised their right in this regard. Plainly, the fact that Sprint did not obtain approval from all of its customers to use their CPNI for marketing purposes strongly suggests that Sprint's CPNI notices to its customers reasonably informed them of their CPNI rights and as a result the approvals obtained by Sprint were informed.

MCI complains that granting AT&T and Sprint grandfather rights would harm competition since AT&T and Sprint be given "a free pass at the outset, while all other carriers must provide the full notification and approval required by the Order." MCI at 47. Of course, Sprint's prior approvals were not "free." Sprint spent significant resources in its good faith attempt to comply with Section 222 during the over two-year period between the time that the provision became law and the Commission issued its *CPNI Order*.

In any event, it is MCI -- and not Sprint or AT&T -- that is seeking the competitive advantage here. Denial of grandfathering rights to Sprint and AT&T would require them to waste significant resources in re-soliciting approvals from customers who had already consented to allow Sprint and AT&T to use their CPNI. MCI will not suffer a similar burden since it did nothing to comply with requirements of Section 222 pending the Commission's *CPNI Order* and is only now beginning to notify its customers of their CPNI rights and obtain their approvals.

Thus, it is MCI that is seeking the "free pass" by asking the Commission to overlook the fact that it ignored its duties under Section 222 for over two years. Sprint and AT&T should not be penalized by the fact that they may now have a "head start" over MCI in obtaining CPNI approvals from their customers. Such "head start" was obtained because Sprint and AT&T acted in good faith to comply with Section 222 while MCI did nothing. Whatever "advantage" Sprint and AT&T may realize as a result of grandfathering its previous approvals will, therefore, be of MCI's "own doing." MCI at 48.

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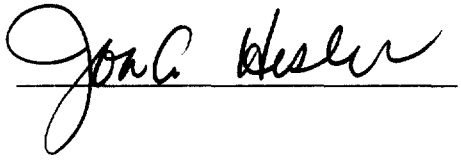
July 8, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the eighth day of July, 1998 to the parties on the attached list.



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